

# CSI - Ohio

## The Common Sense Initiative

### Business Impact Analysis

Agency Name: Opportunities for Ohioans with Disabilities (OOD)

Regulation/Package Title: Vocational Rehabilitation Provider Fee Schedule

Rule Number(s): 3304-1-12 and 3304-2-52

Date: December 13, 2013

Rule Type:

☐ New

☒ 5-Year Review

☒ Amended

☐ Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

#### Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

OOD is proposing changes to 3304-1-12 (Community rehabilitation program standards) and 3304-2-52 (Least cost, use of comparable benefits, consumer contributions, and fees for services). To accurately reflect the agency name change from Rehabilitation Services Commission (RSC) to Opportunities for Ohioans with Disabilities agency (OOD).

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OOD is also proposing changes to the vocational rehabilitation provider fee schedule, which is found in Appendix A of 3304-2-52. These changes in the fee schedule include proposed changes to the vocational testing, the summer youth work experience and report writing fees. OOD also seeks to add clarifying language to the fee schedule service descriptions. These proposed changes are explained in the answer to question 8 and the attached fee schedule draft.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

R.C. 3304.15, 3304.16 & 3304.14(B)(2)

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? No.

If yes, please briefly explain the source and substance of the federal requirement.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The federal government does not set fees for vocational rehabilitation services. However, 34 C.F.R. 361.50 allows vocational rehabilitation agencies to establish fee schedules for services.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

OOD is the state agency charged with partnering with Ohio citizens with disabilities to achieve employment and independence. The Rehabilitation Act, 34 C.F.R. 361.50, allows vocational rehabilitation agencies to establish fee schedules for services. OOD has established a defined VR fee schedule. The fee schedule establishes minimum standards for the quality of services being provided and billed. The fee schedule provides consistency in payments and the type of services being provided for 29 vocational rehabilitation services that totaled approximately \$51.5 for Federal Fiscal Year 2012.

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6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

The fees set will allow cost control for the vocational rehabilitation services, establish clear definitions of what is being purchased, and ensure quality vocational services for eligible individuals with disabilities. The fees have been in place since October 1, 2012. Changes in the fees are necessary to move OOD to the next step of establishing cost based rates. The fee schedule defines what services will be provided and sets the fee for these services. This fee schedule has enabled OOD to set a baseline for provider performance and ensure that all participants receive quality services regardless of their VR provider.

### Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.

If applicable, please include the date and medium by which the stakeholders were initially contacted.

All providers were invited to the stakeholder meetings. OOD conducted three stakeholder meetings, September 6<sup>TH</sup> 9:30 – 11:30 and 1:30 – 3:30 as well as on October 3<sup>RD</sup> 9:30 – 12:00 with providers, and two meetings on September 25<sup>TH</sup> 9:30 – 11:30 and 1:00 – 3:00 with VR staff to collect feedback on the proposed regulations. Providers were notified of the meetings via emails dated 09/27/13 to the provider distribution list. Providers were also given an opportunity to attend the stakeholder meetings in person, video conference, and/or WebEx. Providers were also given a window of time to respond to proposed changes by sending feedback to a [cprvendor@rsc.ohio.gov](mailto:cprvendor@rsc.ohio.gov). VR staff participated in the feedback sessions via WebEx. OOD has continues to accept feedback from providers after the stakeholder meetings.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Proposed changes to the Vocational Testing (VT) fee of setting a “flat fee” were supported by providers. There were some questions about having the option of using a UOS fee for case consultations. OOD plans to continue to use a UOS rate for cases when a full vocational test is not required. This is consistent with the feedback and recommendations of providers.

Changes to the Summer Youth Work Experience (SYWE) were also supported by providers and VR staff. There were administrative issues in 2013 in determining the weekly rate for participants. Different providers also had different weekly rates. By establishing a set duration and weekly rate it will streamline the process for both VR staff and providers. OOD

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also added two tracks which addresses the unique needs of younger and older transitional students by having specific tracks for career exploration and work experiences. The proposed change also establishes a formula for setting SYWE rates and allows for periodic adjustments for minimum wage.

OOD also accepted comments and suggestions for establishing a standardized fee for report writing. OOD indicated in October 2012 that VR intended to establish a standard report fee once VR had an opportunity to evaluate data under the Fee Schedule. OOD proposed a fee of \$50.00 for a majority of services and \$75.00 for Community Based Assessment (CBA), Work Adjustment (WA), and Job Coaching (JC). The rates were based on the average of all authorization line items paid for report writing. The average cost of report writing was for CBA, WA, & JC was \$74.34 which is below the proposed \$75.00 and the average cost of report writing for all other services was \$51.41 which is slightly above the proposed fee of \$50.00. Providers offered several suggestions such as incorporating report writing into the service line and raising the fee; authorizing for report writing on a percentage basis of the service, and to continue the way that it is currently paid for. OOD considered all options. The first option was declined due to the fact that it would increase the overall cost of services for all time spent on the case. This would in effect increase costs to OOD. The second option was declined because it requires an additional level of administrative support by both providers and VR staff. Using a percentage basis would increase the potential for calculation mistakes and cost more time and may result in delay of payments to providers. The third option was also declined due to issues in the past year where there have been disputes between providers and VR staff about the appropriateness and length of time to write reports. This has resulted in an increase in rejected or delayed payments to providers. Set fees for report writing will eliminate most of these concerns. It will streamline the process, eliminate the back and forth between providers and VR staff, is based on actual data on paid authorizations, and is set at a level that will cover the costs of report writing on average.

The other changes to the VR Schedule do not involve changes in fees paid to providers but include clarifying language to the service descriptions in the Fee Schedule that are already in effect in the FFY 2012 and currently. Since providers are currently performing these tasks there is no expected change other than a clarification of requirements for current and future providers.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

OOD ran a utilization report of actual “report writing” line items that had been paid as of September 3, 2013 11:07AM. Based on actual authorization data OOD determined that the average cost of all report writing paid for all services was \$55.71 per month. OOD further analyzed the data and grouped three of the more commonly authorized services with higher

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than average report writing costs (Community Based Assessment, Job Coaching, and Vocational/Work Adjustment). The average cost of report writing for these three services was \$74.34 so VR established a rate of \$75.00 per month for these services. The average costs for report writing for all services was \$51.41 and VR established a rate of \$50.00 for all general report writing. The standard fees were designed to cover the average costs of reports. OD recognizes that in some cases the fee may not cover the entirety but in order cases the fee may exceed actual time.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

OOD considered the option such as establishing a percentage based rate of report writing to actual service. OOD rejected this option as it would require additional time, to figure report writing changes, tracking, and monitoring and increase mathematical errors which would cause a delay in payment processing. OOD also considered including report writing in the administrative costs of the service; however, rejected this option due to the inability to track time spent providing direct services which results in higher quality services versus time spent on report writing.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

OOD is taking steps to move to a cost based rate system. In a cost based system, providers are paid based on a rate established by actual costs incurred to provide the service. Cost based fee structure are currently being used by at least three other state's vocational rehabilitation programs. The standardized fee schedule is the first step in the transition to cost based rates and will allow OOD to better evaluate and monitor the quality of services.

OOD offers the option for providers to use a performance based job development rate. OOD provides guidance on specific elements as part of the service; however, providers are able to establish their own process to deliver the service. Most providers have opted not to have performance based rates.

The standard report fee is based on the concept of a performance based fee. Providers are paid a set amount based on the completion of the deliverable, the report.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

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These rules are specific to the OOD vocational rehabilitation program and individuals with disabilities who are eligible for services within that program. Since OOD is the sole designated agency within Ohio to administer the vocational rehabilitation program there is no duplication between these rules and other rules in the Ohio Administrative Code.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

OOD has established a billing and payment system with checks and balances and OOD will implement this fee schedule update within that same system. OOD has conducted staff and provider training on the fee schedule when it was first implemented in October 2012. OOD will schedule additional training sessions with providers and VR staff to address the changes. OOD's goal is to ensure a smooth transition that will improve service delivery and quality of services provided to individuals with disabilities.

#### Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative *business*." Please include the source for your information/estimated impact.

- a. The impacted business community consists of the providers of vocational rehabilitation services to individuals with disabilities who are eligible for OOD services.
- b. The adverse impact includes the requirement that the vocational rehabilitation providers must complete services and reports as defined in 3304-2-52 Appendix A in order to be paid by VR. The Fee Schedule sets a minimum level of requirements to ensure consistency and quality services to individuals with disabilities.
- c. The time for the vocational rehabilitation providers to provide services and to complete documentation will vary with the nature and extent of the vocational

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rehabilitation services provided to the injured worker, but it is a routine office procedure that vocational rehabilitation providers are experienced in performing for many insurance payers or other state agencies. The adverse impact of completing this paperwork is offset by the fact that the vocational rehabilitation provider will receive payment from OOD for the services and for completing reports.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

First, provider's participation in the OOD vocational rehabilitation program and for reimbursement of services is voluntary. Second, OOD believes that through its comprehensive analysis that it offers a fair, market based standard reimbursement to community rehabilitation providers for their services to eligible individuals with disabilities. Third, the impact of the paperwork costs is a justified expectation of the community rehabilitation provider receives payment for services. Finally, the minimal regulatory impact upon the community rehabilitation provider is balanced by the need to provide a consistent level of quality in services to individuals with disabilities.

#### Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The community rehabilitation providers affected by these rules include: small and large businesses, for profit and non-profit, and counties boards.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

There are no fines or penalties for paperwork violations under these rules.

18. What resources are available to assist small businesses with compliance of the regulation?

OOD has conducted training with providers. OOD will also conduct additional training to providers on the fee schedule changes. OOD posts information on the vocational

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rehabilitation fee schedule on the OOD website at [ood.ohio.gov](http://ood.ohio.gov). Also, community rehabilitation providers can contact OOD for assistance with billing issues.